DOCUMENT RESUME

ED 296 436 EA 020 011

TITLE	Proactive Collective Bargaining for School Board Members.
INSTITUTION	California School Boards Association, Sacramento.
PUB DATE	Apr 87
NOTE	56p.; Revised, expanded, and updated edition of ED 197 424.
AVAILABLE FROM	Publications, California School Boards Association, 916 23rd Street, Sacramento, CA 95816 ($7.50).
PUB TYPE	Guides - Non-Classroom Use (055)
EDRS PRICE	MF01/PC03 Plus Postage.
DESCRIPTORS	*Board of Education Policy; *Board of Education Role; *Collective Bargaining; Elementary Secondary Education; *Employer Employee Relationship; Labor Problems; Labor Relations; Negotiation Agreements; Negotiation Impasses; *Scope of Bargaining; Teacher Strikes
IDENTIFIERS	Educational Employment Relations Act (California); Positive Employment Relations Program

ABSTRACT

This handbook is a guide to the collective bargaining process for school board members. It emphasizes the need for school boards to take the initiative in setting goals, reducing the potential for friction, and preserving management prerogatives against the competing responsibility to bargain in good faith under the law. Chapter 1 describes the role of the school board in collective bargaining. Chapter 2 addresses the issues involved in selecting a chief negotiator to represent the school board in the bargaining process. Chapter 3 lists guidelines for communication between the school district and the community, and also for communication with the district staff and with management and nonmanagement employees. Chapter 4 addresses the board's role in administration of the contract that results from the collective bargaining process. Chapter 5 describes a model communications program entitled PERP (Positive Employment Relations Program) that emphasizes equity, supervision, problem solving, recognition, and professional fulfillment in employment relations. Chapter 6 provides advice for handling impasses and strikes, including mediation, factfinding, and contingency plans for dealing with concerted activities such as strikes and demonstrations. Appended are a glossary of collective bargaining terminology and an overview of the Educational Employment Relations Act. (TE)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

X This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

William D. Blaylock

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

FD296436

EA 020 011

proactive collective bargaining for school board members

proactive collective bargaining for school board members

Acknowledgements

This book is a revised, expanded and updated edition of CSBA's *How To Make Collective Bargaining Work For Your District* prepared by the 1980 Personnel Task Force.

Personnel Task Force Members:

Keith Chun, *Chair*
Ted Hoffman
Mary Anne Houx
Milton Lambertson
Sheila Meyers
Norma Vander Molen
Primo Ruiz

Publications:

Editor: Elaine Levy
Graphic Design
and Production: Kathy Schmitt
Patricia Henley

Published by the California School Boards Association
Sacramento, California

April, 1987

Table of Contents

1 **Introduction**

3 **Chapter 1**
The Role of the School Board In Collective Bargaining

8 **Chapter 2**
Who Should Negotiate For The District?

14 **Chapter 3**
Communications Guidelines

24 **Chapter 4**
Contract Administration

29 **Chapter 5**
A Positive Employment Relations Program
PERP: A Model Communication Program

35 **Chapter 6**
Handling Impasse And Strikes

40 **Appendix A**
Glossary

44 **Appendix B**
Overview of the Educational Employment Relations Act

Introduction

Under the Rodda Act of 1975, also known as SB 160 or the Educational Employment Relations Act (EERA), school boards* are legally responsible for meeting and negotiating with employee representatives. To make collective bargaining work for their districts, both new and veteran school trustees must have a reasonable understanding of the collective bargaining process and their role in it. This knowledge enables school boards to evaluate the available alternatives and make the decisions their office demands. Only a knowledgeable board can be proactive, to take the initiative in collective bargaining. Merely reacting to events is neither good management nor good public policy.

As the policy-making school governing body elected to represent the public interest, a board's primary purpose is to assure high quality education for children. Effective teaching and support services are necessary to achieve this goal. School trustess must balance their responsibility to maintain a strong educational program and to preserve management prerogatiaves against the often competing responsibility to bargain in good faith under the law.

What it takes to accomplish this varies with each circumstance. Because each school district is different and each employment relations situation is unique, this handbook is only a guide to the process; there can be no "formula" for success.

However, several principles are clear.

To achieve the board's collective bargaining goal — that is, a reasonable contract with the bargaining unit, uniformly administered and arrived at with a minimum of community friction — board members must fully understand the negotiations process, while, in most instances, remaining at a distance from it.

In general, the board's role in collective bargaining includes:

- Developing goals and parameters
- Selecting the board's representative

---

*Footnote: Although most of EERA applies equally to district and county boards of education, there can be significant differences between the two if the county superintendent is elected rather than appointed by the board. For example, the "employer" of county office of education employees may be the superintendent instead of or in addition to the county board of education. Check with legal counsel for the current ruling in your county.

- Maintaining communications.
- Planning for emergencies.
- Establishing guidelines for contract administration.

Successful bargaining requires judgment, timing and creativity as boards strive to meet employee concerns without relinquishing management control. Planning and communications are the keys to reducing misunderstandings which could polarize the parties and damage education.

Chapter 1

The Role of the School Board In Collective Bargaining

In its negotiations with the exclusive representatives of the employee unit, the district's management bargaining team* relies upon parameters and guidelines from the school board. These parameters and guidelines are simply a list of priorities of the board's negotiations goals. They must be developed before negotiations begin and must be clearly communicated to the negotiating team.

The negotiating team should know well in advance of bargaining which of the items within the scope of representation are the most important to the board. For instance,

- Do you want a multi-year or single year contract?
- What are the district's financial limitations?
- What salary benefit/package can the district offer?
- What in the previous contract needs to be changed?

In addition to specific aims, a board's general goals might include, for example, having a contract with a fair and equitable salary settlement within the district's financial resources, a set workday when all employees are required to be in the building and that management rights remain uncomprimised.

When the employees' proposal is presented, or even in anticipation of likely demands from the employee organization, the board will want to prepare its responses. For example,

- Is the employees' proposal in or out of scope?
- Does it affect an item within scope?
- Can it be administered?
- Is the demand supported by documentation?
- Is it good for the students: will it improve the learning environment?
- What effect will it have on management rights; on the district's effectiveness?

In times of financial uncertainty especially, your wage offer and the employee organization's wage proposal may be far apart. To close the gap, are you willing to negotiate such non-economic issues as binding arbitration or agency shop? If not, why not? Are there any other non-economic items employees might consider in lieu of a higher wage offer?

The answer to these and other questions will help the board and the negotiating team formulate proposals, counterproposals and

*Footnote: Management concepts discussed here apply to districts with only one negotiator as well as to districts with larger bargaining teams.

at-the-table strategies. It is the responsibility of school administrators to provide board members with the information they need to answer these questions.

At some points in the negotiating process, a school board might have to update or revise the team's negotiating strategies and tactics, or even its original parameters, due to changing circumstances.

This is not to say, however, that a board should intentionally withhold from the bargaining team knowledge of concessions which it initially planned to make. Such a practice could weaken the credibility of the bargaining team and suggest that the board's representative is merely a messenger. It may also constitute an unfair practice if the team does not really have the authority to negotiate. However, a certain amount of flexibility may be necessary to meet unforeseen circumstances.

Communicating the board position to the negotiating team is only one consideration in negotiations. It is equally important that the negotiating team keep the board informed through oral and written reports on the status of the negotiations process. Closed session is the proper forum for these communications. Except for initial proposals, which must be "sunshined," employment relations matters are excluded from the Brown Act provisions on public meetings.

Therefore, school boards not only *may* discuss negotiations in closed session, but properly should do so *only* in closed session. These sessions allow the board the *necessary control* of the negotiations, while placing the task of day-to-day bargaining on the board's negotiating team.

Whatever goes on behind closed doors, it is vital that the board maintains a united front in public. The majority position must be given full public support by board concensus, even when board members are split on specific issues. If one or more board members disagree with the majority, they will certainly make every attempt to convince other board members of their position, but this discussion must not be allowed to become public knowledge.

There are several excellent management reasons, as well as legal requirements, for public unity.

Under the collective bargaining law, the school district is *one* employer with *one* governing board. If differences between board members on specific employment relations issues are allowed to develop into a publicly split board, the board's position as

employer in the negotiations process would be weakened. When this occurs, employee representatives may attempt to bargain directly with individual board members and leave the board's bargaining team without credibility. These actions could also be evidence of bad faith bargaining in violation of the law.

If the collective bargaining process is to work to the advantage of the district,

The Board Must

- Act in good faith from a position of fairness.
- Establish parameters and determine its positions.
- Express these positions through its designated spokesperson.
- Keep its negotiating team informed.
- Be fully informed by the negotiating team.
- Keep all differences between board members behind closed doors.
- Maintain its dedication to the education of the school children.
- Obtain the most competent negotiations representative whose style fits best with the needs of the board and the district.
- Have a sense of humor and a balanced perspective.

Individual Board Members Must Not

- Take employee statements personally.
- Attempt to act on behalf of or to represent other board members or the entire board.
- Take a public position different from the majority position.
- Raise personal issues in public.
- Dilute the issues with personal prejudices and biases.

Roles For Board Members

School trustees should:

- Be primarily policy makers.
- Know and understand the scope of negotiations.
- Stay cohesive and present a unified stand.
- Keep their differences behind closed doors.
- Maintain contact with their constitutents, civic leaders and local political officials.
- Project confidence in the leadership and abilities of district administrators in all public contacts.
- Select a district spokesperson who has credibility in the community, is well informed and articulate.
- Maintain a positive, non-reactive stance during negotiations and refer questions on specifics to the official spokesperson.
- Correct misinformation or untruths calmly and rationally and not take remarks and negotiations tactics personally.
- Communicate actively with the superintendent rather than waiting to be contacted.
- Obtain meaningful and visible support from county trustees associations, CSBA and other management assistance sources.

Chapter 2

Who Should Negotiate For The District?

One of the first collective bargaining decisions a school board must make is the choice of its chief negotiator. Because the rest of the negotiating team is often chosen by the chief negotiator in consultation with the school board and the superintendent, the choice of the person to represent the board at the table is usually the primary one. Also, one of the tenets of collective bargaining is that one person is designated to speak for the bargaining team and conduct the across-the-table negotiations.

Good negotiators have certain qualities in common, as well as other *specific qualities that may be appropriate for your district but not for other districts.* In general, a positive approach to negotiations requires a chief negotiator who is flexible, courteous, honest, patient and empathetic. The ability to interpret laws, PERB and court decisions and arbitration rulings and an understanding of public education are usually basic requirements for any district chief negotiator. And, generally, he or she is a specialist in contract language, and thus able to avoid wording which could cause problems in administering the collective bargaining agreement.

Beyond these personal characteristics, the chief negotiator's responsibilities also define the type of person the board wants to fill this role. The chief negotiator:

- In consultation with the board and superintendent, selects the rest of the negotiating team.
- Assigns specific roles to team members and makes certain each member understands his or her assignment.
- Solicits ideas from the members of the negotiating team.
- Orchestrates the table tactics and strategies within the board's established parameters.
- Calls for assistance to obtain details on specific issues; contacts appropriate resource persons when there is a question to be answered.
- Keeps the board informed on the status of negotiations.
- Is directed by the board's parameters and guidelines.

Your district may have a person on staff with both the ability and interest to undertake the role of chief spokesperson at the table. Perhaps you have hired a personnel director or other administrator specifically to fill this role in your district. *Whether to obtain the services of an "outside" negotiator or to train someone already on staff to undertake negotiations responsibilities will be the school board's decision.*

The skills, experience and abilities of the local staff must be analyzed in light of the qualities you demand in your chief negotiator. The main consideration should be that the contract is too important to be negotiated by someone ill-prepared or unfamiliar with the process. Another important factor to consider is whether the conflicts inherent in the bargaining process will hinder this staff person's effectiveness in performing his or her day-to-day job duties. And, because the negotiator is the representative of the board, his or her style must be compatible with that of the board.

If your analysis discloses no one on staff who has the ability and interest to act as chief spokesperson without detriment to his or her regular job performance, your district's needs may be best met by obtaining qualified assistance.

Labor and school law firms, private consultants and even administrators from other school districts are some of the sources of outside assistance. If financial considerations are a factor in deciding on a chief negotiator, these sources can also assist by (1) comparing the cost of their services with that of hiring an additional staff person, (2) supplying information on state reimbursement of mandated collective bargaining costs, and (3) providing an experienced at-the-table negotiator.

In addition, a Collective Bargaining Assistance Team can be requested from the Calfiornia School Boards Association. This team of experienced school board members and selected administrators or other professionals is designed to help school management cope with collective bargaining crises.

Should the Superintendent Negotiate?

Experience with collective bargaining in California and other states leaves open to debate the question of the superintendent acting as chief negotiator. Although many point to evidence that the superintendent's primary roles as chief executive officer of the district, and educational, management and staff leader are not enhanced by his or her participation in at-the-table negotiations, others see it differently. At issue is the climate of trust and cooperation essential for the superintendent to lead and manage district staff. The question becomes: "Will this climate be compromised or enhanced by the superintendent's involvement in the often adversarial nature of collective bargaining?"

Whether the superintendent is chief negotiator or not, in addition to delegating certain negotiations duties to others, his or

her role would be:

- To advise the team and the board during negotiations.
- To participate in management bargaining team caucuses.
- To make key recommendations on management positions.
- To direct the data gathering and back up support for the negotiating team.
- To implement the agreement.

In addition, the superintendent often acts as liaison between the negotiating team and the board, assuring that the chief negotiator is receiving sufficient direction and staying within the board's parameters and that both the board and the negotiator are adequately informed. This is especially valuable when the crush of negotiations preclude more frequent closed meetings between the board and negotiator.

To fulfill his or her role of providing leadership and counsel to the board and the negotiation team, the superintendent needn't be immersed in the negotiations process itself. In fact, by staying away from the table, the superintendent may avoid situations that compromise that role or inhibit the negotiations process. For instance,

- Frankness and candor by parties are essential ingredients of negotiations. Would the superintendent's presence inhibit the discussions?
- The roles of the members of the negotiating team encourage demonstration of leadership abilities. Would the superintendent's presence discourage this opportunity for subordinate staff's growth?
- The chief negotiator must speak for the district. Would the superintendent's presence weaken the authority and importance of the chief negotiator?
- Problems often develop during negotiations. Would the superintendent's presence put him or her in the uncomfortable position of assuming responsibility for those problems?
- Emotional conflicts and derogatory comments can be part of the give and take at the table. Would the superintendent's presence or participation injure his or her leadership role away from the table?

To further justify the superintendent's absence from the bargaining table, many districts feel that the superintendent's presence leads to the mistaken belief that negotiations are a higher district priority than education, responsible management and other district goals.

Should Board Members Negotiate?

Many of the same factors relating to the involvement of the superintendent at the bargaining table also apply to board members.

The role of the board in making policy can be compromised by the negotiations process just as the superintendent's leadership role can be. Delegating collective bargaining responsibilities as outlined in Chapter 1 should adequately allow the school board to maintain the necessary control without infringing on other board priorities.

Although in some districts school board members have sometimes served successfully on the negotiation team, generally, arguments for the absence of board members outweigh those for their presence.

Another option is for a board member to attend, but not participate in, some or all negotiations sessions. Advocates of this idea have found the presence of a board member selected by the board to have enhanced a spirit of mutual trust. The danger here is that members of either bargaining team might confuse the important, but subtle, distinction between actual participation in the process and a board member's presence.

Whether it is absence, presence, or participation, factors to consider in determining a board member's role in the process include:

- *Time:* as non-paid lay representatives, school board members already donate considerable time and effort to the district. Adding bargaining to this commitment may be not only unrealistic, but may lead to less time available for other district and personal obligations.
- *Background:* few board members have the necessary training for and familiarity with the details and intricacies of collective bargaining.
- *Conflict:* direct board member involvement blurs the delineation between policy making and administration.

Keeping in mind the individual characteristics peculiar to each district, consider also the effect the presence of a board member could have on the negotiations process itself:

- The board member who is also a negotiator increases his or her vulnerability to political pressure and stress while unnecessarily risking exposure to unpleasantness and personal conflict.
- The board member who is also a negotiator may lose the

independence of his or her vote on the board by surrendering impartially at the table. By the time the board votes on ratification, the negotiators have already reached tentative agreement. It is then up to the board to accept or reject it. But if one of the board members, in the role of a negotiator, has already tentatively agreed, the entire board's role is compromised.

- The board member who acts as negotiator will find that maintaining positive relationships with staff is difficult in the collective bargaining arena. For some negotiators (on either side), it is impossible to separate ideas and opinions from the personalities who present them. This could imperil your district's personnel relations long after bargaining ends.
- The emphasis in negotiations is most often on implementation and administration rather than policy. While policy is involved, there is less discussion of what will be done (policy) than of how it will be done (administration). The presence of a board member/negotiator confuses the important distinctions between policy and administration.
- The board member who acts as negotiator gives up one of the advantages of his or her office. Employees are often represented at the table by one of their bargaining specialists. Management should also be represented by a specialist. If organizational representatives negotiate with board members, they are bargaining directly with those who also have final authority for decisions. Further, unless you are bargaining with a unit that has fewer members than your board, a single board member/negotiator represents a larger proportion of the board membership than a single employee/negotiator represents of the unit membership.
- Finally, the board member who acts as negotiator can jeopardize the authority of the chief negotiator. If the chief negotiator is seen to retire into executive session with the board, he or she can claim with authority that he or she is speaking for the entire board at the table? Can a member of a split board do the same convincingly?

In sum, the proper execution of the responsibilities of boardsmanship is demanding enough. The public interest board members represent can best be served when the role of the board in labor relations remains consistent with it overall role as policy maker.

Chapter 3
Communications Guidelines

In addition to the two-way communication between the school board and the negotiating team discussed in previous chapters, other avenues of communication are also vital to harmony in employment relations. Students, parents and other taxpayers, plus administrators and employees who are not directly involved in the negotiations currently underway want to be informed. All these members of your community care about the public schools. If routes of communication between you and them are developed, potentially explosive situations resulting from negotiations disputes can be defused or their effects minimized.

Following are some general rules for effective employment relations communications:

- Listening is basic. As much as you may dislike some of the things you hear, listening well enables you to assess the complete picture.
- Sophisticated tools for assessing public opinion will allow you access to opinions beyond those expressed at public meetings. Periodic surveys of your community and staff will accurately and objectively measure a cross section of community opinion on vital issues — data you will want to have available to make and back-up your decisions.
- Information must flow freely in all directions. Beyond allowing all interested parties access to the school board at public meetings, you should develop routes of communication which allow for a mutually acceptable flow of information through printed materials and informal meetings.
- Never assume you know someone's view. Only when he or she verbalizes that view can you ask the questions that will clarify it. You may find you're not so far apart after all. Or you may ultimately agree to disagree.
- Even in the area of collective bargaining, where the actual negotiations process is most often private, communications among all th3se groups continues — often informally through rumor and one-sided communications. *Your district's formal public and staff information programs can be vital for throwing light on the negotiations process.*

Communication Between School District and Community

School boards are the elected representatives of their communities. In most cases, where board members and other interested members of the community maintain constant communication, the

board's position truly represents the community's attitude. In addition, school boards often provide the leadership to express and act upon community concerns. However, in some communities, reduced district resources have forced cuts in school programs and services, often alienating parents and other taxpayers from the school board they elected to juggle district priorities to cope with those limited resources. School boards are well advised to keep the community informed on the board's employment relations objectives and to strive for agreements consistent with community attitudes and opinions.

In collective bargaining, especially where there is a potential for an employee strike, communication with the community is the key to a mutal understanding that:

- The board's position represents the public interest.
- The board is vigorously defending that interest.
- The community is listened to and its concerns heeded.
- The negotiations process is one of mutual compromise; to be successful, both parties and the community can "win."
- Both the board and the rest of the community will keep each other informed.

In some communities, representatives of various community groups, like the PTA, sit as non-participating observers at the bargaining table. Even the press is allowed to send observers in some school districts. Although a few districts have found this to be an efffective method of community involvement, others have found it can impede the negotiations process. The parties at the table tend to "play" to the audience rather than to get down to the serious and candid discussions successful bargaining demands.

Whatever your decision on opening or closing negotiations to the public, the principle is this: Where the school board and community enjoy a good relationship and the board representatives vigorously defend during negotiations the interests expressed in that relationship, the contract settlement is generally acceptable to the community.

Credibility is the communications tie that binds school board and community. Regardless of any differences of opinion that might separate them, problems often disappear when the community realizes that the board is being honest.

To maintain that credibility, the district can take the following steps:

- Make available to interested parties an action summary of board

minutes the day following each board meeting.

- Include the community in back-to-school activities.
- Distribute newsletters featuring social, personal and professional activities of district staff as well as updates on district news of interest to the community.
- Appoint a citizens' committee of community leaders and an educator representative to make recommendations to the school board on popular or controversial issues.
- Include parents on committees of teachers and administrators to discuss learning objectives, student discipline, or textbook selection, for example.
- Define clearly the procedures for speakers at board meetings and perhaps provide each speaker with written information on the board's function and the names of administrators or other participants in the meeting.
- Provide graphs and interpretations of such complex topics as student achievement, district finances, and others at board meetings to facilitate understanding of progress and result.

Other methods for involving the public in its schools also involve administrators and other district employees and are discussed in subsequent sections of this chapter.

Communication With District Staff

In general, you, as a school board, will communicate directly with administrators and, through them, with the nonadministrative staff.

Individual employees and representatives of employee organizations have the same free speech rights as the rest of the members of the community to address the school board at public meetings. Therefore, employees cannot be prohibited from speaking on collective bargaining items. However, under the collective bargaining law, EERA-covered employees must *negotiate* (through their employee organizations) only with the board's appointed bargaining team — not directly with the school board. The same law prohibits the school district from bypassing the employees' exclusive representative to bargain directly with employees.

So your communications with administrators who have no collective bargaining rights will differ in both form and substance from your communications with other employees. Under collective bargaining law (EERA), administrative and other staff positions are subdivided into management, supervisory, confidential, classified

and certificated employees. Understanding the differences between each of these groups of employees will clarify their relationships to each other, to the board, and to the employee organizations. These differences will also define your program for communicating with each.

Management positions include the superintendent and assistant superintendents for personnel, instruction and so on, as well as the district's business manager, school principals, and other administrators whose job duties fit the definition of "management employee" under the EERA. This law defines such employees as those "having significant responsibilities for formulating district policies *or* administering district programs." However, the Public Employment Relations Board (PERB) has, through its administrative decisions, redefined management employees as those "having significant responsibilities for formulating district policies *and* administering district programs."

Other employees are designated "confidential." These are employees whose regular work involves access to the district's confidential records and meetings on employment relations. For instance, the seretary who takes notes at negotiations meetings and management caucuses would be a confidential employee.

If there is a challenge, however, inclusion or exclusion from these designations, as well as from the list of supervisory positions, are subject to PERB's review. In any case, it is the employee's job and its duties which determine his or her collective bargaining rights. Changing jobs or duties could change an employee's status under the collective bargaining law as well.

Employees designated as management or confidential have no collective bargaining rights under EERA.

Other employees are designated rank and file or supervisory. Each of these groups have collective bargaining rights under EERA. If they choose to bargain collectively, supervisors' units *must* be entirely separate from the rank-and-file unit(s). Further, the supervisors' unit(s), if any, must be represented in collective bargaining by a different employee organization from the one(s) representing employees they supervise. Supervisors are defined in EERA as those

> having authority in the interest of the employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to assign work to and direct them, or to adjust their grievances, or effectively recommend such action, if, in

connection with the foregoing functions, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

In most districts, supervisors are employees such as department heads or chairpersons, cafeteria managers and head librarians.

In addition to these distinctions, no bargaining unit of employees is allowed, under the law, to contain both certificated and classified employees.

So how does a school board communicate with all these groups of employees? The key is to balance the requirements and restrictions of the law with allowable programs for effective multi-lateral communications described in the next few pages.

Communication With Management Employees

The management team concept is of prime importance in collective bargaining. Except in districts where the chief spokesperson is hired from outside the district specifically to fill that role, your entire bargaining team will consist of management employees. The team concept, however, extends beyond those management employees who participate at the table.

During the life of any collective bargaining agreement, those administrators who have direct day-to-day contact with employees covered under the contract also have experience in trying to live with the terms of that contract. The input of people such as principals and site administrators during the negotiations process will enable your at-the-table team to respond knowledgeably to employee proposals. In addition, site administrators can help the management team identify areas in the prior contract which should be altered, added, or deleted in the subsequent contract to avoid a continuation of problems they have experienced.

After the contract is signed, your management team should meet periodically to reivew the terms of the contract, both for effective contract administration (discussed in Chapter 4) and as preparation for subsequent contracts.

Members of your district's management team will supply the necessary facts and figures to both the board and the bargaining team. For instance, the district's business manager supplies financial data; another administrator supplies information on educational programs; the personnel director supplies pertinent information on such things as expected attrition (who is leaving

district employment) and employment relations comparisons with other districts.*

The team approach to district management allows the school board to assimilate all the data and to relate each item of information to the other. For instance, will the new reading program necessitate hiring new teachers and aides? Must other teachers and aides be laid off or can the budget support additional positions without layoffs? Will attrition mean program cuts or will reassignment of the remaining staff or hiring additional staff allow for full programming? How will each percentage point of salary increase affect these plans?

In these times of limited resources, few districts can afford to negotiate any economic issue without examining its impact. Even non-economic issues may involve hidden costs in money or in the board's management control. Your management team supplies the information you will need to evaluate your options and make the necessary decisions.

On the other hand, you are responsible for communicating your concerns to the management team. Board policy is useless unless it is clearly translated into specfic directions and communicated to the people who are responsible for implementing it. If your management team understands what the school board is doing and why, each administrator will have the information necessary to make decisions or to take action.

Effective administration requires this kind of two-way communication between policy makers and policy administrators.

In sum, members of your district's management team:

- Develop and gather necessary information.
- Supply that information to the school board and negotiating team.
- Participate in at-the-table negotiations or act as resource to the bargaining team.
- Identify portions of the current contract which make managing inflexible or which create problems.
- Support the district's negotiating positions.
- Administer the contract.
- Understand the terms of the contract and board policy for effective and consistent administration.

*Footnote: We recognize, of course, that in some smaller districts these functions are carried on by one or two administrators, who must supply all these kinds of information to the board.

Communication With Non-Management Employees

Communication between non-management employees and the school board is as important as between management employees and the board.

However, in the area of collective bargaining, where school boards and employees may most desire direct communication, communication needs and desires must be balanced against legal restrictions on interaction with EERA-covered employees.

During collective bargaining, especially, rumors are apt to float around the district about the employees' demands, the district's offers, the financial condition of the district, the number of layoffs or new positions anticipated and all other matters discussed at the bargaining table.

Without compromising their legal responsibilities under EERA, *school boards can still effectively communicate with employees.* Distribution of a negotiations update bulletin is one type of allowed communication. The one caution is: never allow yourself to commit an unfair labor practice by bypassing the employees' exclusive bargaining agent to bargain directly with those employees.

The best communication program starts before bargaining begins and continues through the negotiations process into the life of the contract. In other words, communication should never cease. For example, your district could:

- Develop a school district newsletter featuring interesting employees, programs and other district news. This or another vehicle can also be the appropriate medium for negotiations updates. If the newsletter has a reputation for honesty, its coverage of the negotiations will be credible as well. Whatever vehicle you use to relay information during negotiations must be carefully edited to exclude any message that is either untrue, inflammatory or violates EERA. If properly done, the same newsletter can be used to communicate with all employees and with the community.
- Sponsor, as a board, retirement dinners and other social functions with employees where you and they can meet informally and discuss areas of mutual concern (but, of course, not negotiate).
- Include employees and their organizational representatives in community back-to-school activities. Informal non-negotiating contacts with employees and their representatives "humanize" the negotiations process and the people involved in it. In

addition, employees and employee representatives will gain a greater understanding of the schools if they are exposed to aspects of school operations with which they have not previously been familiar.

- Occasionally visit the schools yourself. If possible, go during the times the schools are in full operation. Prearrange your visit to ensure that it is not inconvenient or misperceived as "checking up" on employees. The purpose of the visit should be to emphasize your concern for the schools, students and employees and to increase your understanding of school operations. Visit the lunchroom as well as the classroom; classified employees must feel they are important to the schools.
- Include employees on committees with administrators in areas in which their expertise would be valuable. For instance, include teachers on curriculum committees or secretaries and janitors on vandalism committees.
- Include employees on committees with community members to, for example, cooperatively review textbooks or playground equipment for recommended purchase.
- Include, as a regular board meeting agenda item, personal reports from employees on the particular phase of the district instructional program in which they are involved. If one or two reports are given per meeting, a major portion of the district staff will have been involved by the end of the year.
- Schedule inservice workshops on minimum pupil days in your school calendar. Workshops provide the mechanism to strengthen individual abilities and educational skills.
- Schedule regular "rap" sessions among board members, employees and administrators — but don't let these turn into bargaining sessions.
- Make sure employees have the information and materials they need to do their jobs. If requested r ources are not available, tell employees why not or when they will be available.

Intrastaff Communications

Beyond the staff-board and community-board communications discussed in previous sections of this chapter, informal avenues of information exchange exist between different levels of employees and between employees and the community. A comprehensive communications program recognizes this "grapevine" and uses it to the district's advantage.

In a school district, as in any enterprise, people talk to each other. But without an effective program, information may never reach those who can act upon it or, as in the old telephone game, it may be completely distorted by the time it does.

The adversarial nature which collective bargaining sometimes assumes can create a mutual "political enemies" image between school employees and school management. An ideal situation is where employees feel confidence in both management and the union. A positive working relationship between district management and employee organizations resulting in fair and equitable contracts with a minimum of friction will, of course, foster that confidence.

But beyond the negotiations arena, a complete communications program that treats each district employee as a valuable member of the school system will promote continuing employment relations harmony.

Chapter 4
Contract Administration

Once actual negotiations between the district and employee organizations have concluded in a signed agreement, it's all too easy to assume the board's collective bargaining responsibilities have ended. Such an assumption would be misleading at best and counterproductive at worst.

First, if the contract covers more than one year, it may call for periodic "reopeners" on some issues. For example, instead of committing the district to give a specified wage increase each year over the life of a multi-year contract, the parties agree to "reopen" negotiations on that and/or other specified issues each year.

Even if the negotiated agreement does not contain reopeners, employment relations is cyclical and does not begin or end at any one point. Implementation of the agreement can be of even greater significance than negotiations and should certainly not be underestimated.

If those responsible for the operation of the school system fail to consistently and uniformly carry out the requirements of the contract, the good work of the negotiators at the table may be undone. School administrators at the central office, and perhaps more importantly, at the site level, as well as each employee covered under the contract, must thoroughly understand the provisions of the agreement. Further, all administrators must clearly understand the procedures for administration and supervision outlined in the contract, school policies or through other district communications.

While there is no magic formula for successful contract administration, the basic element is trained contract administrators. Contract administration tends to be successful in districts where all levels of administrators are proponents and protectors of management's rights. These people are trained to interpret the contract's language *literally* rather than *liberally*. Such interpretation of the contract is the essence of contract administration. And training and communication are the tools.

The communications suggestions in Chapter 3 are as useful in contract administration as they are in all other areas of employment relations. Lack of communication, on the other hand, could potentially result in inconsistent contract administration through gaps in knowledge and understanding of the agreement.

Where all levels of administrators are continually involved in the negotiations process, as suggested earlier, the entire management team is fully aware that the true test of the negotiated agreement is in administering the contract on a day-to-day basis.

Successful contract administration requires that administrators:

- Treat employees equally — without regard to union affiliation or non-affiliation or degree of union activity.
- Apply all district policies uniformly.
- Do not condone rule violations or deviations from contract or policy terms.
- Do not act hastily, yet do not unnecessarily delay required actions or decisions.
- Be aware of the meaning and implication of all decisions.
- Coordinate policies and decisions at all administrative levels to avoid inconsistencies.
- Rigidly adhere to contract procedures. This applies to all aspects of the negotiated agreement including, for example, length of work day, starting and quitting times, extra duty assignments, granting or refusing absence excuses, and giving written notices. If circumstances warrant a rare exception, it must be clear that no overall change in "past practice" is intended or contemplated.
- Do not expressly waive or modify prerogatives reserved to management.
- Waive no rights granted by the agreement or by statute.
- Handle grievances fairly, quickly and precisely according to the appropriate district procedure.

In-service workshops conducted throughout the year for the entire administrative team will help ensure that all of the district's administrators and supervisors fulfill this role, and will pinpoint problem areas to be rectified in subsequent contracts.

Certain personality qualities characterize good contract administrators: workshops to develop such qualities as patience and listening skills could be a valuable investment for your district.

In addition to in-service training, your district's communication program can be a vehicle for dissemination of the policies, rules, regulations and contract terms supervisors require to administer the contract.

The board's role is to charge upper level management with the responsibility for developing the contract administration tools necessary to translate the terms of the new agreement into a process of consistent implementation. Those tools could include, for instance:

- A management team briefing session prior to implementation of the new agreement.
- Periodic in-service training of administrators and supervisors.

- Distribution of annotated copies of the agreement with complete explanations of, and comments on, relevant terms prior to the briefing or training session.
- A two-way process to communicate the problems in contract administration and to devise ways to solve those problems.
- A process to monitor employee compliance with the terms of the contract.

Part of contract administration is the prevention of grievances. Equally important is the handling of grievances and complaints which may arise despite the best effort to avoid them. Again, trained administrators and supervisors are the key to consistency in this area.

When grievances do occur, well trained administrators and supervisors not only handle them appropriately, but also use the experiences to prepare for the next round of negotiations. Because grievances concern the interpretation of contract terms, each contract should improve upon the last, so that misinterpretations become less and less frequent. In that way, the training of administrators and supervisors to spot these opportunities for contract improvement will pay dividends with improved contract language, consistency and, it is hoped, harmonious employment relations.

By instituting training and communications programs in your district, you, as a school board, will help ensure that your negotiated agreement does for your district all that you expected on the day you signed it.

Basics of Contract Administration

- **Contract administration is the process of implementation, interpretation and enforcement of the agreement.**
- **Contract administration is an on-going process.**
- **Contract administration is the means through which the objectives of the collective bargaining relationship are fulfilled.**
- **The agreement is only as good as the administration of it.**
- **A centralized authority should be responsible for uniform interpretations and decisions.**
- **Contract interpretation establishes practices which in turn become the basis for future negotiations; thus, consistency is imperative.**

Policy Versus Contract

If a school board is to maintain both its management prerogatives and the flexibility to exercise those prerogatives, policies and negotiated contracts should be distinct and serve distinctly separate purposes.

Policy	Contract
Reached during public process by majority vote of board.	Reached during bilateral process between employee and employer representatives by collective bargaining.
May be altered by majority vote of board at any public meeting.	May be altered only through negotiations with union.
Should be broad statements of intent, yet drawn narrowly enough to give clear guidance to district administrators in carrying out board's goals; allows some freedom to interpret and implement.	Should contain explicit language allowing little flexibility in implementation and little room for errors in interpretation.
Guides the operation of school district.	Directs specific details of school operation.

Chapter 5

PERP: Positive Employment Relations Program

A Model Communications Program

Positive employment relations don't just happen; they are the result of constructive communications. In addition to the collective bargaining requirements under the Educational Employment Relations Act, a comprehensive school district program will contain elements necessary to ensure that employee/employer relations are positive.

One such comprehensive plan is called a positive employment relations program or PERP. Its advocates call "incomplete" any employment relations program which begins and ends with collective bargaining and "organizational competitiveness."

Under a PERP, information is channeled to and from the governing board for effective and harmonious district management and supplements the collective bargaining aspect of a district's employment relations program.

The basic elements of a PERP are *equity, supervision, problem solving, recognition* and *professional fulfillment.*

Equity

In many situations, negative employee attitudes are the result of poor or no communication of management's decisions and rationale rather than disagreement with the decisions themselves. If, as many believe, low employee morale, based on perceptions of inequity, manifests itself in combative attitudes during contract negotiations, it follows that high employee morale is a factor in harmonious employment relations. Employee perceptions of fairness can be fostered through a district's PERP.

For instance, many districts conduct studies of their district's salary competitiveness and internal salary structures prior to bargaining wage increases. Frequently these studies are conducted by school district administrators without any input from non-management employees. However, if such an analysis includes a survey of supervisors and employees as to what comparisons *they* feel are appropriate, management can get a better idea of its next course of action. If management and employees agree on the criteria to be used for comparison, neither will have to "sell" the results of the analysis at the bargaining table; if employee and management perceptions are far apart, management can choose to either reassess its initial comparisons based upon these new insights from employees or it can conduct programs to explain why its comparisons *are* valid.

Under either choice, district administration will be perceived as "fair" to employees without relinquishing management rights or infringing upon collective bargaining responsibilities with the exclusive representative.

Supervision

Because the foundation of a PERP is communication, the channels for transmitting board policy and employee concerns include the people responsible for keeping those channels open —supervisors.

It is essential, therefore, to analyze carefully and improve the supervisory element of the program by keeping in mind your district's goals and the best ways to reach them. Review and training are the key to successful supervision.

Although some individuals are natural leaders who will function well in a supervisory role from nearly the beginning, most will need at least some skill development and training. Of course, any amount of training and development supposes that the individuals involved have the basic capabilities and interest in being a supervisor. Training topics should include development of communications skills, both written and oral. Suggested sub-topics are how to orient employees to the job, schedule and direct employees, conduct meetings and properly use handbooks and personnel policies.

Supervisory training should focus on human relations topics including employee coaching, employee motivation, fairness and due process, discipline and other corrective action, coping with employee attitudes (including changing value systems) and affirmative action and non-discrimination. In other words, good supervisors should be able to recognize the needs of their employees, understand those needs, and, when reasonable, assist employees in meeting their needs.

Well-trained supervisors need the continued commitment, support, involvement and communication of middle and upper management to function effectively in their role.

A regular review of personnel policies and procedures helps ensure that they reflect the changing needs of both the employer and the employee. The employer should make significant efforts to ensure that personnel policies are uniformly followed, and that exceptions to any policy are minimal in number and reasonable in nature. Here again, the importance of equity cannot be overstated.

Problem Solving

The third element of a PERP is problem solving.

The training of supervisors must include educating them to avoid personalizing an employee's unhappiness with a supervisor's decisions, especially when an employee decides to appeal a supervisor's decision to a higher level of management.

One way to avoid personalizing these complaints, is to establish a complaint or grievance procedure to handle problems in a more formal manner. The size of the district is a major consideration in deciding whether a formal procedure is desirable. Generally, small districts are better able to solve problems informally, while larger districts often find a formal process to be most efficient.

Another consideration is to make sure that the procedure be neither overly involved nor so complex that the substance of the problem itself becomes lost among the procedural regulations and time tables.

An employer who establishes a complaint/grievance procedure must continually strive to maintain its credibility. That is, for the procedure to be effective, employees must feel that they have received fair treatment and an honest consideration of their problems. A complaint or grievance procedure which lacks credibility may very well harm positive employee relations to a greater degree than no procedure at all.

Another element of many PERPs is a mechanism whereby employees may candidly and anonymously express their concerns and feelings about the employment setting. This is many times accomplished through an ongoing "suggestion system" or through "employee attitude surveys." Either of these approaches must carry with it a management commitment to treat the feedback seriously and strive to implement those comments and suggestions which are deemed to be reasonable and practicable.

Recognition

Recognition of outstanding employee service to the employer is another element that reinforces positive employment relations.

Recognition programs may center around distinction awards for numbers of years of service as well as programs which recognize outstanding service to the district, its students, parents and the public.

As in all elements of a PERP, this aspect must coexist with the collective bargaining law's provisions governing employees' terms and conditions of employment. Check with legal counsel to determine if some or all aspects of a recognition program affecting employees' wages, hours, evaluations or other conditions of employment may be subject to the collective bargaining process.

Probably the most important, and certainly the most difficult recognition program to administer is the performance and merit program. Here again, the caliber of supervision is put to the test. Performance and merit programs will reinforce positive employment relations only if they are viewed as objective and equitable by the employees.

To attain such goals, supervisors must be trained to establish objective standards of performance and then evaluate each employee's performance based upon those established standards.

Second, *bona fide* merit increases should be reserved for clearly superior performers. Merit programs which give "something to almost everybody" tend to water down the intended goal of encouraging and rewarding superior performance.

Third, merit programs will tend to be ineffective and possibly negative in impact if they are not preceded by a wage or salary program which brings about increased adjustments equivalent or nearly equivalent to the increase in the cost of living. In other words, employees will not be responsive to a merit system which requires above average or superior performance just to maintain their standard of living.

Professional Fulfillment

Your district's PERP cannot be complete without considering the element of employee job satisfaction and its effect upon morale. A major source of employee discontent in many employment settings revolves around either a perceived or real lack of career and/or promotional opportunity. This is, many times, coupled with an unhappiness with the job content of their present position.

The employer should assess its employment function to determine whether the placements made are suitable. Is the successful candidate for a job a realistic match of skill, background and experience with the job requirement? If the candidate is overqualified and thus underemployed in a given position, the basic ingredients are present for employee discontent. Likewise, if the candidate lacks the necessry qualifications to complete the job

successfully, discontent is a logical outgrowth of the poor placement.

For those employees who have higher aspirations than their present job, the employer should consider developing a career counseling program which would (a) inform interested employees of present and future job opportunities, (b) assist employees in assessing their present skills and experience, and (c) determine what skills and knowledge each employee should attain in order to successfully compete when future opportunities become available within the organization. This entire program should be integrated with a strong sense of realism so that false expectations are not created nor maintained. To do otherwise only exacerbates the problem.

Conclusion

Although this chapter may define the kind of positive employment relations program your district has or could implement, several cautions are in order.

Because employment relations is only one aspect of your district's operations, a PERP or any employment relations program must exist in the context of board policy, educational and managerial concerns and statutory requirements. And because each district is unique, the elements of a PERP must be specifically geared to each employer and employment setting, so it best meets overall management goals. The goal of any positive employment relations program should be to assess and then meet the needs of as many employees as possible and practicable. If employees continue to feel their needs are not being met, they will turn to other alternatives in an effort to fulfill them.

Chapter 6
Handling Impasse And Strikes

In recognition of the possibility that negotiations may hit occasional snags, the collective bargaining law provides mechanisms for easing the course of negotiations which are not running smoothly.

Called "impasse procedures" in the Educational Employment Relations Act, these mechanisms include mediation and fact-finding. Binding interest arbitration (as distinct from grievance arbitration) is not a part of the collective bargaining law in California. Nor does the law specifically condone strikes by employees or lockouts by employers as appropriate methods for resolving disputes. Factfinding and mediation, therefore, were envisioned by the legislature as the process by which strikes, lockouts and binding interest arbitration would be averted.

Since EERA was first implemented in the late 1970s, these impasse procedures have been used successfully in many California public school negotiations situations. However, because strikes have still occurred, the courts and the Public Employment Relations Board have had to address them directly. Using its authority to obtain an order from a court, the PERB has established, through its regulations, procedures to stop strikes and lockouts if they violate EERA. This route bypasses the question of whether public employee strikes and other concerted activities are legal or illegal per se under any other state law.

These procedures are all subject to PERB's regulations as well as provisions of EERA itself. Consult legal counsel for more detailed spcecific information.

Mediation

If, after a series of negotiating sessions, the parties reach a stalemate on one or several issues, either party may declare impasse. Upon declaration of impasse, the PERB will appoint an impartial professional mediator to assist the district and employee organization in reaching a negotiated agreement. This is a state-supported service, free to the parties.

The parties may instead elect to use the services of any other mutually agreed upon mediator to facilitate the process. Some districts have successfully relied upon community leaders, such as the mayor, to mediate disputes. There is nothing in the law to prohibit this as long as the mediator is mutually agreed upon and PERB's intervention is not sought.

Factfinding

If the mediator agrees that mediation is not sufficient, the next step is factfinding, if at least one party requests it. This consists of a hearing (the degree of formality of the hearing varies with each factfinder's style) at which each party presents its "case" to a factfinding panel. The three-person panel includes a representative from the employer, a representative from the employee organization and a neutral chairperson. The neutral, a professional factfinder/arbitrator, is chosen from a PERB-supplied list. The list contains an odd number of names and each party takes turns striking one name from the list. The remaining name is your factfinding chairperson.

As with mediation, the law allows the parties to mutally agree upon a factfinding chairperson without PERB's intervention. If the parties cannot agree, PERB's procedure remains available.

After the hearing, the panel retires and submits one or more recommended advisory settlements. In some cases each party's representative on the panel will sign the neutral's recommendation. In other cases, either or both of the representatives will submit separate additional reports on areas in which they disagree with the neutral's recommendations.

At any point in the process, the parties may reach agreement. If they reach agreement before the report is issued and the process is completed — often the upublished factfinding report is enough to bring the parties to agreement — the report need not be released.

If it is released, it must be "sunshined" for ten days. When that is completed the district may, under the law, institute (in lieu of negotiated contract) the "last, best offer" it presented at the bargaining table. Or it may return to the bargaining table for "post-factfinding" mediation. The terms and conditions of employment must be either the result of the district's implementation of the factfinding report or its "last, best offer" or the negotiated agreement. School boards are cautioned never to modify their last, best offer before implementing it unless bargaining continues or a contract settlement occurs.

Concerted Activities

Because the California Legislature has never passed any law specifically granting all public employees the same right to engage in such activities as strikes, work stoppages, slow-downs and sick

outs as granted to private sector unions by the National Labor Relations Act, the common belief had been that public employees have no such rights.

However, that view was overturned by the California Supreme Court when it ruled that public employers must overcome the presumption that public employees do not lose their basic rights solely by virtue of their employment by a public agency. This grant of a right without a statutory basis creates special problems for school districts. To convince a court to deny to public employees those rights which private sector employees take for granted (that is, to convince a court to order an end to concerted activities as illegal), a public employer must prove that such activities:

- create a public emergency (such as a danger to public health) and
- there is no other recourse to remedy the emergency (such as management employees doing the emergency work).

That does not mean public school employers are without recourse in the face of a strike or other employee concerted activity.

To the contrary, the court's decision has meant very little actual change. During the many years the courts were ducking the question of whether or not strikes were legal in the public sector, the California Supreme Court ruled that, in many instances, such strikes are PERB's problem — that strikes could arguably be unfair practices, whatever else they might be. This is particularly true when a union strikes prior to the conclusion of the impasse procedure. In such cases, if it can be shown that the strike is an economic and not an unfair practice strike, PERB will seek injunctive relief in behalf of a district.

PERB's response is a set of regulations, adopted after a series of public hearings, whereby, upon request of either party, it will investigate and may seek an injunction when a strike against a school district (and certain other public employers) occurs.

The purpose of the injunction is for the party or parties to return to the status quo and, ultimately, renew negotiations and reach a settlement.

The catch is that PERB does not automatically act on behalf of the school district (or employee organization, for that matter). After it investigates a request for injunctive relief, PERB may refuse or comply with the request. Or it may, and often does, seek injunctions against both the employer and the employee organization. In any case, PERB is not just a conduit for the public employer to bring its

case before the court.

This is an extremely sensitive and controversial area of complex law and practice. If your district is faced with the possibility of a strike, competent legal counsel is essential. It is essential that counsel be involved long before an actual job action. The evidentiary burden of seeking PERB's help is time consuming and difficult.

However, knowing that concerted activities, as any emergency, can occur with little warning, prudence dictates that your district be prepared with an emergency plan, tools to implement that plan and good practical and legal advice. Your district's policies in this area must be up to date or certain necessary actions may be delayed or foreclosed to you.

Even if harmony has, until now, existed in your district's employment relations and you expect that situation to continue, part of a school board's responsibility includes planning well in advance for unforeseen events (such as school employee strikes) which could potentially threaten school operation. This planning also includes periodic review of your plans to ensure they are still adequate and consistent with changes in law and district circumstances.

The California School Boards Association is one of your best sources for information and advice before, during and after — or perhaps, instead of — any concerted activities.

After this book had gone to the printer, PERB issued a finding that an intermittent strike by Compton teachers was illegal and obtained a court order to halt the walkouts.

The PERB decision that the work stoppages were "an unfair practice" and "a coercive negotiating tactic" represented a major policy shift.

It appears likely this decision will be appealed through the court system and that a definitive ruling cannot be expected in the immediate future. CSBA will follow the case carefully.

Appendix A
Glossary

agency shop: an organizational security provision of a collective bargaining agreement which requires employees, as a condition of continued employment, to join the employee organization, or to pay a service fee of not more than the amount of the membership fees. Employees with a religious conscientious objection to such fees may instead donate the money to a charity. (While the in-lieu-of-membership fee must exclude the costs of the union's purely political and other non-bargaining activities, what costs are, and what costs aren't, related to the union's function as exclusive representative is difficult to determine. In any case, it is a matter solely involving employees and unions and to which the employer is not a party.)

arbitration, advisory: a grievance settlement procedure whereby an impartial third party renders a decision on submitted issue(s) which is not binding on the parties.

arbitration, binding: a grievance settlement procedure whereby an impartial third party renders a final and binding decision upon the parties.

arbitration, interest: the final step of the negotiating process in some states (*not* California) whereby a neutral third party defines the contract settlement when negotiations do not produce a settlement.

bargaining unit: the positions, job titles, or functions within a community of interest which define the group of employees appropriate for collective bargaining.

concerted activities: collective action undertaken by employees for the purpose of pressuring management (e.g. strikes, sickouts, slowdowns).

confidential employee: an employee who, in the regular course of duties, has access to or possesses information relating to school district employment relations.

decertification: the procedure for voting out a union as exclusive representative of employees in a bargaining unit.

EERA: Educational Employment Relations Act, the collective bargaining law covering employees of public schools (kindergarten through community colleges). Also called the Rodda Act or SB 160.

employee organization: (also called the "employee association" or "union") an association of employees which represents employees in their relationship with the employer. May become the exclusive representative upon vote of employees in unit or upon voluntary recognition by the employer. Once an exclusive representative is selected, the rights of all other, non-exclusive, employee organizations are limited.

exclusive representative: the employee organization recognized or certified as the exclusive negotiating representative of an appropriate bargaining unit.

factfinding: a voluntary procedure following mediation in which a hearing is conducted before a three-person panel to review the positions and factual differences of the parties. The panel (which consists of a representative from the employer, a representative from the employee organization, and a neutral third party as chairperson) prepares a recommended advisory contract settlement.

good faith bargaining: where the employer and employee organization exchange and discuss proposals in a sincere and honest effort to reach a contract agreement on matters within the scope of bargaining.

grievance: an employee complaint or allegation that a collective bargaining contract provision has been violated. Also the process by which these allegations are investigated and a decision rendered to dismiss the allegation or remedy the violation.

impasse: parties have reached a point in meeting and negotiating at which their differences in positions are so substantial or prolonged that future meetings would be futile. Can be declared by either or both parties.

last, best offer: the final proposal by each party, at the end of the collective bargaining process.

management employee: an employee in a position designated by the employer (subject to PERB review) as having significant responsbilities for formulating district

policies and administering district programs.

management rights: the public employer's authority over matters which do not require negotiations with the exclusive representative and are reserved to management (also may be referred to as "residual rights of management" or "management prerogatives").

mediation: advisory intervention and assistance by an impartial party, usually appointed by PERB, to facilitate a negotiated agreement between the employer and the employee organization when at impasse.

meeting and negotiating: discussion between the exclusive representative and the public school employer in a good faith effort to reach agreement on matters within the scope of representation. The result is usually a written document incorporating the agreements reached.

Public Employment Relations Board (PERB): agency established for regulating the collective bargaining process in the public schools (K-14). Also covers state employees under legislation known as SEERA and public higher education employees under HERRA. (See Appendix B for PERB's specific functions under SB 160.)

public school employer: the governing board of a school district, a county board of education, and/or a county superintendent of schools.

release time: time away from employee's regular job duties when meeting and negotiating or processing grievances. Under SB 160, a reasonable number of employees shall have the right to receive reasonable periods of release time without loss of compensation when pursuing these collective bargaining-related activities.

representation election: a vote conducted by PERB to determine whether a majority of employees in a bargaining unit want to be represented by an exclusive representative; if so, the employee organization with the largest vote becomes the exclusive representative.

Rodda Act: the collective bargaining law covering employees of public schools (kindergarten through community colleges). Also known as SB 160 or the Educational Employment Relations Act (EERA).

scope of representation or scope of bargaining: the mandatory issues defined in SB 160 for meeting and negotiating are wages, hours of employment, health and welfare benefits, leaves, transfers, reassignment, safety conditions of employment, class size, employee evaluation procedures, and grievance processing procedures. PERB decisions have expanded this scope to include matters related to the enumerated items.

supervisory employee: an employee, regardless of job title or description, having authority in the interest of the employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline employees, or the responsibility to assign work or direct them, adjust their grievances, or effectively recommend such action. In connection with those functions, the exercise of this authority is of more than merely a routine or clerical nature, and must require the use of independent judgment.

unfair practices: actions of employers or employee organizations which are prohibited under SB 160. Also called unfair labor practices. (See Appendix B for an overview of SB 160, the collective bargaining law.)

Appendix B
Overview of the Educational Employment Relations Act

The Educational Employment Relations Act (EERA) is the law governing collective bargaining in the public schools (K-14). Its stated purpose is to

> promote improvement of personnel management and employer-employee relations ... by providing a uniform basis for recognizing the right of public school employees to join organizations of their choice, to be represented by such organizations in their professional and employment relationships with public school employers, to select one employee organization as the exclusive representative of the employees in an appropriate unit, and to afford certificated employees a voice in the formulation of educational policy.

To that end, EERA creates an administrative agency, the Public Employment Relations Board (PERB), to oversee the law; defines employees covered and excluded under the law; and establishes the scope of negotiations, public notice provisions and other aspects of collective bargaining.

Administration

The PERB consists of five members appointed by the governor with the advice and consent of the state senate. PERB members are appointed for staggered terms of five years, except that a person appointed to fill a vacancy only serves for the unexpired term of the member he or she succeeded. The governor also selects one of the members to serve as chairperson. Three of the five members of the board constitute a quorum and a majority. Although no member can be excluded from participating in any case, because of its huge workload, most PERB cases are decided by panels of three members.

In addition to EERA, PERB administers two other public employment relations statutes: HEERA, covering the state universities and colleges and their employees, and SEERA, covering state employee/employer relations.

In addition to the members of the board, the PERB staff includes an executive director; an executive assistant; legal counsel for each board member; separate regional offices and staff in Los Angeles,

Sacramento and San Francisco for statewide coverage; the office of administrative hearings with a chief administrative law judge and a staff of hearing officers to conduct the original hearings on charges filed by individuals, public employee organizations and public employers; the office of general counsel to pursue PERB's case before the courts on requests for injunctive relief and appeals or enforcement of PERB decisions and orders; and clerical and support staff for the entire operation.

The PERB functions in the public sector in much the same way the National Labor Relations Board (NLRB) functions in the private sector. EERA gives PERB broad duties and powers, including the authority to:

1. Determine in disputed cases, or otherwise approve, appropriate units.
2. Determine in disputed cases whether a particular item is within or without the scope of representation.
3. Conduct secret ballot representation elections and certify the results.
4. Maintain lists of qualified mediators, arbitrators and fact-finders.
5. Establish regulations for reviewing proposals to change unit determinations.
6. Adopt rules and regulations to carry out the law's purposes.
7. Hold hearings, subpoena witnesses and records, administer oaths, and take testimony on matters within its jurisdiction.
8. Investigate and issue orders to remedy charges of unfair labor practices or other alleged violations of the EERA.
9. Bring action in the courts to enforce its orders, decisions or rulings.
10. Decide contested matters involving recognition, certification, or decertification of employee organizations.

Public Notice

Initial proposals of both the employer's and the employees' representatives must be presented at a public meeting of the school board where they become public records. The public notice section is intended to give the public an opportunity to express its views.

Scope of Negotiations

Mandatory subjects are limited to matters relating to wages, hours and other terms and conditions of employment. Terms and

conditions of employment are:

1. Health and welfare benefits.
2. Leave, transfer, and reassingment policies.
3. Safety conditions of employment.
4. Class size.
5. Procedures for employee evaluation.
6. Organizational security.
7. Procedures for processing grievances.
8. Causes and procedures for disciplinary action of certificated employees, other than dismissal, including suspension of pay for up to 15 days.
9. Procedures and criteria for the layoff of certificated employees for lack of funds.
10. Payment of additional compensation based upon criteria other than years of training and years of experience.

Consultation subjects which the exclusive representative of certificated employees may consult on with the public school employer are:

1. Definition of educational objectives.
2. Determination of course content and curriculum.
3. Selection of textbooks to the extent such matters are within the discretion of the public school employer under state law.

All matters not specifically enumerated in EERA are meant to be reserved to the public school employer and not be the subject of meeting and negotiating. However, the law states that this section should not be construed to limit the right of the employer to consult with any employee or employee organization on any matter outside the scope of representation.

And years of practice, as well as PERB and court decisions, have modified the limitations of scope. Legally, just stating an item is outside of scope is no longer enough to fulfill a party's obligation under EERA. Instead, the objecting party (usually the employer) must discuss with the other party (usually the employee organization) whether or not an out of scope subject might be closely related to a matter within scope and, if not, how the proposal might be redrawn so it would be negotiable.

Grievance Procedures and Arbitration

Because PERB has no jurisdiction to enforce or interpret a contract between a public employer and its employees (unless the alleged contract violation also constitutes an unfair practice),

negotiated agreements frequently include grievance procedures to resolve disputes about the interpretation and application of the contract. The law provides that the parties may agree to a contract in which final and binding arbitration can be the final step of such a negotiated grievance procedure.

Organizational Security

A negotiated contract may provide that an employee may decide whether or not to join an employee organization unless the agreement calls for organizational security:

- *Maintenance of Membership* provides that an employee who decides to join an organization must maintain that membership in good standing for the duration of the contract.
- *Agency Shop* provides that an employee must either join an exclusive representative or pay the organization a service fee equivalent to but no more than the regular dues, initiation fees and general assessments, as a condition of continued employment.

Unfair Practices

Neither school boards nor employee organizations may engage in unfair practices. These include:

1. Reprisals, discrimination, restraint or coercion against employees for the exercise of their rights.
2. Failure to meet and negotiate in good faith.
3. Refusal to participate in good faith in the impasse procedures.
4. Causing or attempting to cause the other party to commit unfair practices.

It is also an unfair practice for a school board to dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another.

If a party is found to have committed an unfair practice, penalties can include orders for the party in violation to cease and desist from the unlawful actions, to rememdy the violation (for example, back pay plus interest awards are common remedies for employers' unilateral actions) and to post a notice of PERB's findings and orders.

Unit Determination

The PERB also resolves conflicts on bargaining unit determinations. Community of interest is the criterion PERB uses to determine whether a petitioned for unit is an appropriate unit. Aside from ensuring that there is a community of interest among the employees in the proposed unit, other criteria and restrictions must also be considered, including:

1. A unit which includes classroom teachers must include all classroom teachers.
2. A unit of supervisors must include all (certificated or classified) supervisors in the district, and they may not be represented by the same organization which represents employees they supervise.
3. Classified and certificated employees may not be in the same negotiating unit.

Impasse

Impasse is defined as occurring when parties have reached a point in meeting and negotiating on matters within the scope of negotiations where future meetings would be futile.

Mediation

Either party *may* declare impasse and ask the PERB to appoint a mediator. If he or she cannot resolve the issue within 15 days and declares that factfinding is appropriate, either party may request that their differences be submitted to a factfinding panel.

Factfinding

If the impasse goes to factfinding, the procedure is that:

1. Each party picks a panel member, and both select the chairperson.
2. The panel holds a hearing and each party attempts to prove its point of view is the accurate one.
3. The panel must then submit to the parties its findings and recommendations from the hearing based on the following criteria:
   a. Applicable laws, stipulations, interest of the public, and the financial status of the employer and employees.
   b. Comparison with employees involved in simlar services in local or comparable communities.
   c. Consumer price index.

   d. The overall compensation received by employees, including direct wages, vacations, holidays and other excused time, insurance and pensions, medical benefits, the continuity and stability of employment and other benefits received.
   e. Such other facts, not confined to those above, normally considered in making such findings and recommendations.
4. The panel's recommendations are not binding and must be submitted privately to the parties. The employer must then make them public within 10 days, unless settlement occurs first.
5. The mediator may continue after the factfinding on the basis of the panel's findings and recommendations.
6. If no settlement occurs, the school board may adopt either the factfinding report or its last, best offer as the district's working conditions for that unit of employees, as negotiations resume on a successor contract. Alternatively, the district may continue as before to use the previous, expired contract as the working conditions for that unit of employees, as negotiations resume on a successor contract.

CSBA Officers

President	Dianne Jacob, *Jamul-Dulzura Un. ESD*
President-Elect	Mary Anne Houx, *Chico USD*
Vice-President	Bill Ingram, *Perris Un. HSD*
Immediate Past President	Joe Duardo, *South Whittier ESD*
Executive Director	Herb Salinger

CSBA Region Directors

1. Judy Walters, *Mendocino USD*
2. Deborah Marcum, *Fall River Jt. USD*
3. Carol Kalamaras, *Fairfield Suisun USD*
4. Tommiana Lynch, *Gridley Un. SD*
5. Mary Janney, *San Mateo Un. HSD*
6. Louise Perez, *Sacramento City USD*
7. J. Ward MacDonald, *Piedmont USD*
8. Betty Ustach, *Sylvan Un. ESD*
9. Charity Webb, *Berryessa Un. ESD*
10. George R. Johnson, *Sanger USD*
11. Janet Lindgren, *Oxnard Un. HSD*
12. Earl O. Smith, *Standard ESD*
13. Robert Green, *Bonita USD*
14. Audrey P. Hanson, *Burbank USD*
15. Ken Slimmer, *Garden Grove USD*
16. Janet Mishodek, *Yucaipa Jt. USD*
17. Carol Chubb, *Lemon Grove ESD*
18. Matt Monica, *Desert Sands USD*
19. Betty Gibbel, *Riverside County Board of Education*
19. Brenda Brimhall, *Butte County Board of Education*

CSBA Directors-At-Large

Black	Brenda Jones, *Woodland Jt. USD*
Mexican-American	Hector Varela, *Bassett USD*
Other Minority	Benjamin Tom, *San Francisco USD*
NSBA Director	Daniel Towler, *Los Angeles County Board of Education*

CSBA Communications/Media Relations

Director, Communications/Marketing	Bill Blaylock
Director, Media Relations	Michael Fallon
Communications Specialist	Brian Lewis
Senior Graphic Artist	Kathy Schmitt
Graphic Artist	Patricia Henley
Administrative Secretary	Cindy Warfe

Special thanks to Audrey P. Hanson, Burbank Unified School District, for her careful review of the draft document of this publication.

California School Boards Association
916 23rd Street, Sacramento, CA 95816